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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 680

IRVING J. REUTER,

Petitioner,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS AND BRIEF IN SUPPORT THEREOF.

JAMES A. COSGROVE,
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PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Irving J. Reuter, respectfully shows unto this Honorable Court as follows:

This is a petition for a writ of certiorari to the Court of Claims of the United States to review a judgment made and entered in that court on October 7, 1940.

A.

Summary Statement of the Matter Involved.

Petitioner filed with the Court of Claims of the United States on January 18, 1939, a petition praying for judgment against the United States in the sum of $11,800.69.

This claim was based upon the contention that individual income tax and interest in this amount for the year 1934 had been erroneously and illegally collected by the Collector of Internal Revenue for the District of Michigan at Detroit, Michigan.

The aforesaid amount of income tax and interest had been paid by petitioner on March 3, 1938, as a result of an assessment made against him by the Collector of Internal Revenue for the District of Michigan. This assessment consisted of a deficiency in 1934 income tax in the principal amount of $10,038.93 made on the ground that certain income received during 1934 by the Jan-Irv Trust Fund, of which petitioner was the grantor, was taxable to the grantor. The remainder of the assessment consisted of interest on this deficiency.

On March 21, 1938, petitioner filed a claim for refund of the aforesaid deficiency and interest with the Collector of Internal Revenue for the District of Michigan. This claim was based on the ground that petitioner was not liable for taxation on the income of the Jan-Irv Trust Fund under Section 166 of the Revenue Act of 1934, since the trust was irrevocable and the income in question was currently distributable to named beneficiaries other than petitioner. No action having been taken on this claim for a period in excess of six months, the petitioner filed his suit with the Court of Claims of the United States as above stated.

On October 7, 1940, the Court of Claims made its special findings of fact and conclusion of law and in its opinion held that the instant case was governed by the principle established by this court in *Helvering* v. *Clifford,* 309 U. S. 331. Accordingly, the court held that petitioner was taxable on the income of the Jan-Irv Trust under the provisions of Section 22(a) of the Revenue Act of 1934. The Court of Claims deemed it unnecessary to discuss the applicability of Section 166 of the Revenue Act of 1934 to the case at bar.

B.

Relevant Parts of Statutes Involved.

The statutes involved in this proceeding are Section 22(a), Section 161 and Section 166 of the Revenue Act of 1934, the relevant parts of which are as follows:

"Sec. 22. GROSS INCOME.

(a) GENERAL DEFINITION. 'Gross income' includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *"

"Sec. 161. IMPOSITION OF TAX.

(a) APPLICATION OF TAX. The taxes imposed by this title upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust.

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary may be either distributed to the beneficiaries or accumulated.

(b) COMPUTATION AND PAYMENT. The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor.)"

"Sec. 166. REVOCABLE TRUSTS.

Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or

(2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom,

then the income of such part of the trust shall be included in computing the net income of the grantor."

C.

Questions Presented.

The questions presented by this petition are:

1. Whether Section 22(a) of the Revenue Act of 1934 requires the taxation to the grantor of the income of a trust irrevocable during the year in question and only contingently revocable in the future, where such income is required to be currently distributed to persons other than the grantor.

2. Whether the Court of Claims of the United States erred in extending the principle of *Helvering* v. *Clifford*, 309 U. S. 331, to such a trust, despite the fact that the trust did not terminate by its own terms and recovery of the corpus by the grantor was purely contingent.

3. Whether the taxation of the income of trusts such as that involved in this proceeding is to be determined by application of Section 161 of the Revenue Act of 1934 rather than Section 22(a) of said Act.

D.

Reasons for Granting the Petition.

1. The Court of Claims of the United States has erred in extending the rule laid down by this Court in its decision in the case of *Helvering* v. *Clifford, supra,* to the grantor of a trust, differing in material respects from the trust which was before this Court in that case. In the *Clifford* case this Court had before it a trust, the term of which was limited to five years, created by a trust instrument which provided that upon the expiration of this brief term the corpus of the trust should revest in the grantor. During the life of the trust the grantor, as trustee, exercised unusually broad and extensive powers of management and control, not only of the investment policy of the trust, but likewise over the distribution of the income. The beneficiary of the trust was the grantor's wife. On these facts this court decided that the income of the trust was taxable to the grantor as a part of his own gross income and as one of the items of gross income enumerated and covered by the provisions of Section 22(a) of the Revenue Act of 1934. This was, in effect, a determination that the trust itself was without substance and that the trust corpus remained, from the point of view of economic realities and for the purposes of taxation, a part of the property of the grantor.

In the instant proceeding the Court of Claims has attempted to extend this principle to a trust which had substance. The declaration of trust of the Jan-Irv Trust provided that the trust should be irrevocable for a period of at least five years. Upon the expiration of this period the grantor, if living, had power to terminate the trust, pro-

vided, however, that notice of termination had been given at least thirty days prior to such expiration. On the failure of such notice or the failure of the grantor to survive the five-year period, the trust was to continue irrevocably for an additional five years, at the expiration of which extended period the corpus was to be distributed to persons other than the grantor.

The decision of the Court of Claims threatens the extension of the principle of the *Clifford* case to trusts possessing real substance, the creation of which effected a real and substantial diminution of the economic rights of their grantors, merely by reason of their limited term. The effect of such an extension is to expand the class of trusts whose income the Congress determined should be taxable to the grantors thereof by enacting the specific provisions of Section 166. Such a threatened extension creates a situation which renders appropriate the intervention of this Court.

2. The identical issue involved in this proceeding is now pending before the United States Circuit Court of Appeals for the Fifth Circuit on an appeal from a decision of the United States Board of Tax Appeals. The case in the Fifth Circuit (*Irving J. Reuter* v. *Commissioner,* B. T. A. Docket 96843, petition for review filed October 31, 1940) involves the same taxpayer and the same trust as the instant proceeding but relates to income for years following 1934, the year here in question. In the event that the taxpayer is sustained in his appeal to the Circuit Court of Appeals for the Fifth Circuit, there will be a conflict between the decision of that court and the decision of the United States Court of Claims in the instant proceeding. Such a conflict would warrant the intervention of this Court, which is only possible if the present petition is granted.

3. The Court of Claims has erred in determining that the petitioner herein should be subject to taxation in respect to income which could neither be distributed to him, used

for his benefit, nor accumulated for future distribution to him. The court has erred in determining that petitioner should be treated as the real owner of the corpus of a trust, despite the fact that such corpus could revert to him only on the happening of contingencies in the future, in the absence of which distribution of the corpus to named remaindermen was required. It is apparent that error was committed in determining that petitioner, in these circumstances, "retained the substance of full enjoyment of all the rights which previously he had in the property" and that the Court of Claims has disregarded the fundamental equity of the rule that one taxpayer should not be taxed upon the income of another. See *Nichols* v. *Coolidge*, 274 U. S. 531; *Hoeper* v. *The Tax Commission of Wisconsin*, 284 U. S. 206.

WHEREFORE your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Court of Claims of the United States, commanding that court to certify and to send to this Court for its review and determination on a day certain to be designated, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket *Irving J. Reuter*, Plaintiff, v. *The United States*, Defendant, No. 44588, and that the judgment of the Court of Claims of the United States may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

And your petitioner will ever pray.

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